



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200951042

SEP 21 2009

Uniform Issue List: 402.00-00

XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

SET:EP:RA:T2

Legend:

Taxpayer A	=	XXXXXXXXXXXX
Company A	=	XXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXX
Account Z	=	XXXXXXXXXXXX XXXXXXXXXXXX
Form A	=	XXXXXXXXXXXX
Form B	=	XXXXXXXXXXXX
Financial Advisor G	=	XXXXXXXXXXXX
Amount A	=	XXXXXXXXXXXX
Amount B	=	XXXXXXXXXXXX
Amount C	=	XXXXXXXXXXXX
Amount D	=	XXXXXXXXXXXX
Amount E	=	XXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXX
Date 4	=	XXXXXXXXXXXX

XXXXXXXXXX

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Date 5 = XXXXXXXXXXXX

Plan X = XXXXXXXXXXXX

Year M = XXXXXXXXXXXX

Year N = XXXXXXXXXXXX

Year O = XXXXXXXXXXXX

Year P = XXXXXXXXXXXX

Year Q = XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This letter is in response to your request dated July 31, 2009, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 60, represents that he received a series of four distributions from Plan X totaling Amount E. Taxpayer A asserts that his failure to accomplish a rollover of each distribution within the 60-day period prescribed by section 402(c)(3) was due to an error made by Financial Advisor G of Financial Institution B. Taxpayer A also represents that Amount E has not been used for any other purpose.

Taxpayer A represents that he participated in Plan X, an Employee Stock Ownership Plan (ESOP), which was maintained by Company A. Taxpayer A states that he was notified by Plan X that he was eligible to make a diversification election. On Date 1, Taxpayer A signed Form A and elected to move some of the funds currently invested in ESOP stock into an individual retirement account (IRA). Form A states, in part, that the distribution will be reported to the IRS as a rollover into an IRA. Prior to making the election, Taxpayer A consulted with Financial Advisor G of Financial Institution B regarding setting up an appropriate IRA account and was given an account number, Account Z. However, Account Z was not an IRA but a money market non-IRA account.

On Date 2, Amount A, was deposited by Financial Institution B into Account Z. On Date 3, Amount B, which was made payable to Financial Institution B for the benefit of (FBO) Taxpayer A, was also deposited into Account Z. In Year M, Plan X issued

Form 1099-R showing Code "G", indicating direct rollovers of Amount A and Amount B. On Date 4, Amount C, the final distribution under the diversification election was made payable to Financial Institution B FBO Taxpayer A and deposited into Account Z. In Year N, Plan X issued Form 1099-R showing Code "G" indicating that it was a direct rollover of Amount C.

During Year P, Taxpayer A became eligible for the Plan X Age 60 distribution and elected, pursuant to Form B, to rollover a partial amount of this distribution, Amount D, into an IRA. Amount D was made payable to Financial Institution B FBO Taxpayer A and, on Date 5, was deposited in Account Z. Plan X again issued a Form 1099-R showing Code "G" indicating a direct rollover from a qualified plan.

Taxpayer A represents that each distribution was intended to be directly transferred into an IRA account and that he instructed Financial Advisor G to open an IRA account with Financial Institution B. However, instead of establishing an IRA, Financial Advisor G incorrectly deposited each amount into Account Z.

Taxpayer A represents further that he was unaware of the incorrect deposit errors until Year Q, when his accountant questioned the Form 1099-R reflecting earnings on Account Z for Year P, because he had elected direct transfers, and the checks which were distributed by Plan X were made payable to Financial Institution B FBO Taxpayer A. Taxpayer A also represents that Plan X issued Forms 1099-R to Taxpayer A showing that direct rollovers had occurred. In addition, Taxpayer A represents that because he believed that Account Z was an IRA, there was no investment activity during the years at issue. He further represents that no Forms 1099-R reflecting earnings on Account Z were issued for years M or N that would have alerted him to Account Z's non-IRA status. Taxpayer A's accountant did not question the Form 1099 issued for Year O, because he assumed that Taxpayer A had taken money from some of his other savings and investment accounts and moved it to Financial Institution B.

Documentation provided indicates that Financial Advisor G incorrectly deposited Amount E to Account Z, a non-IRA account. Specifically, Financial Advisor G has provided a statement under penalty of perjury admitting that he made a mistake in establishing Account Z even though Taxpayer A had informed him that he intended to establish an IRA for the purpose of rolling over distributions from Plan X.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount E from Plan X.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then

such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, Q&A-3 of the Regulations provides, in relevant part, that a direct rollover may be accomplished by any reasonable means of direct payment, including mailing of a check to the trustee or custodian of the eligible retirement plan or IRA to which the rollover is being made.

Section 1.401(a)(31)-1, Q&A-15 of the Regulations provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish timely rollovers was caused by errors made by Financial Advisor G of Financial Institution B, which resulted in each distribution being deposited into Account Z, a non-IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amounts A, B, C and D from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount E to a Rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount E will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XX-XXXX) at XXX-XXXXXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,

for Laura B. Wansbury
Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose